

APPENDIX G

**PETRO-CHEMICAL SYSTEMS, INC. / TURTLE BAYOU
SUPERFUND SITE
2007 RD/RA CONSENT DECREE**

Lyondell Chemical Co., et al. V. Albemarle Corp., et al.
No. 01: 01-CV-890 (E.D. Tex.)

APPENDIX G

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF _____ §

THAT, FOR AND IN CONSIDERATION of the sum of TEN DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, _____ (whether one or more, and collectively, "**Grantor**"), having an address of _____, grant, sell, and convey to [_____] having an address of [_____] ("**Grantee**"), a permanent environmental easement and covenant (the "**Easement**") in, on, over, under, and upon those certain parcels of land located in _____ County, Texas, and more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Property**") under the terms, conditions and covenants set forth below.

1. Purpose: This instrument conveys to Grantee real property rights and interests that run with the Property in perpetuity to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
2. Superfund Site. The Property is part of the Turtle Bayou Superfund Site ("**Site**"), which the United States Environmental Protection Agency ("**EPA**"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986.
3. Record of Decision. In a Record of Decision dated September 22, 2006 (the "**ROD**"), the EPA Region VI Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions (refer to the ROD for descriptions of the areas referenced below):
 - (a) Mechanical auger mixing of the soils in the central disposal area of the County Road (CR) 126 West Area (a.k.a Far West Road Area, FWRA) to a depth of 25 feet with chemical oxidant to treat most affected soils and a portion of the shallow ground water zone, and using lime, cement, or flyash to strengthen the treated soils;
 - (b) Installation of replacement monitor wells that were plugged during the remedial construction, and new perimeter monitor wells; and
 - (c) Implementing institutional controls through either obtaining property ownership or restrictive covenants for the property necessary to implement the remedy and protect human health and the environment.

(d) The remedial action for the Bayou Disposal Area (BDA) includes soil excavation as necessary to achieve the soil remedial criteria; plugging or conversion of water wells presently located on the BDA and potentially those wells located on nearby properties into monitoring wells; and institutional controls to limit potential exposures to affected ground water and soil.

(e) A Technical Impracticability Zone (TI Zone) will be established after a two-year transitional monitoring period. The two-year monitoring period will also be used to determine whether the selected remedy is effective to prevent contaminants with concentrations exceeding the ground water protection standards from migrating beyond the TI Zone boundary.

(f) Identification of contingency remedies for the Site in the event that future ground water monitoring demonstrates that the plumes of contaminated ground water are expanding in the S1 and/or S2 sand beyond the TI Zone boundary (refer to the ROD for a description of S1 and S2 sands).

4. Grantor Cooperation in Response Actions. Grantor agrees to cooperate fully with Grantee in the implementation of all response actions at the Site (including, without limitation, those included in the ROD); and
5. Access to Property and Easement Groundwater: Grantee (including Grantee's representatives and contractors) may access the Property at all times for any of the following purposes:
 - (a) Implementing, monitoring, and verifying any and all response and remedial action required under CERCLA and/or the ROD and the results thereof and taking all other action Grantee deems necessary or desirable, including but not limited to mechanical auger mixing and in situ chemical oxidation of affected soils and installation of replacement and new monitor wells in CR 126 West Area, and implementation of institutional controls in CR 126 West Area and the BDA;
 - (b) Verifying any data or information submitted to EPA;
 - (c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - (d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
 - (e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations;

(f) Assessing the implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans; and

(g) Assessing the need for, planning, and implementing additional or new response actions if Grantee, in its sole discretion, determines such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner.

6. Prohibited Uses: Grantor covenants that it shall not conduct or allow to be conducted any of the following uses of or activities on or from the Property:

(a) Any drilling, production, or use of groundwater, including all underground water, percolating water, artesian water, or other water relating to the Property from the ground surface to a depth of _____ feet (including, without limitation, the groundwater from the Chicot Aquifer, which includes the Beaumont Formation, Lissie Aquifer, and Willis Sand), and any hydraulically connected aquifer or sand (collectively, the “**Easement Groundwater**”);

(b) Any drilling or other activity that affects the aquifers and/or geologic formations in which the Easement Groundwater is located; provided, however, that drilling for and production of groundwater other than the Easement Groundwater may be conducted only if performed in strict compliance with plans, methods, and specifications approved by Grantee in its sole discretion;

(c) Any access to the Easement Groundwater in any manner whatsoever;

(d) Excavation of any soil on the Property to a depth of more than 3 feet below the ground surface as it existed as of May 1, 2006; provided, however that Grantor may perform excavation or trenching necessary for the following activities if Grantor first obtains the prior written consent of [_____] (which consent shall not be unreasonably withheld): (i) maintenance or repair of existing utilities or pipelines, (ii) planting of trees or shrubs, (iii) stormwater control or spill prevention, control and countermeasure activities, (iv) installation of roads, (v) installation of fencing.

Grantor’s covenants in this Section 6 shall benefit the easement estate conveyed to Grantee herein and shall run with the Property in perpetuity.

7. EPA Access. Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA’s authority to take response actions under CERCLA, the National Contingency Plan, or other federal law.
8. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

9. Notice Requirement: Grantor shall include in any instrument conveying any interest in any portion of the Property (including but not limited to deeds, leases and mortgages), a notice in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, DATED _____, 2007, RECORDED IN THE
REAL PROPERTY RECORDS OF _____ COUNTY,
TEXAS, UNDER DOCUMENT NO. ____, IN FAVOR OF, AND
ENFORCEABLE BY, [_____] AND
ITS SUCESSORS AND ASSIGNS.**

Within thirty (30) days after the date any such instrument of conveyance is executed, Grantor shall deliver to Grantee a certified true copy of said instrument and, if it has been recorded in the real property records, said copy shall be certified by the Office of the County Clerk of _____ County, Texas.

10. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests, if any, acquired by the United States by this instrument is the EPA.
11. Enforcement: Grantee may enforce the terms of this instrument by specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement shall be at Grantee's discretion, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term, or of any of Grantee's rights under this instrument. This instrument shall be enforceable against Grantor, any subsequent owner of the Property, any lessee, and any person using or occupying the Property. Under no circumstances shall enforcement of this instrument be defeated because of any subsequent adverse possession, laches, estoppel, or waiver and Grantor hereby waives any defense of laches, estoppel, waiver, or prescription. Additionally, notwithstanding anything in this instrument to the contrary (and without limiting the provisions of the preceding sentence), if it is determined that this Environmental Protection Easement, or any provision thereof, is governed by or subject to and violates the rule against perpetuities or any other rule of law limiting the term or duration hereof, then this Environmental Protection Easement, or such provision, as the case may be, shall terminate on: (a) the date that is 20 years after the death of the last surviving descendant (who is alive as of the date hereof) of Joseph Patrick Kennedy, Sr., father of the 35th President of the United States of America; or (b) such shorter period as may be the longest period permitted pursuant to any such rule of law.
12. Damages: Without limiting Grantee's right to specific performance and other equitable remedies, Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

13. Representations, Warranties, and Additional Covenants: Grantor hereby covenants to and with, and represents and warrants to, Grantee and its successors and assigns, (a) that Grantor is lawfully seized in fee simple of the Property, (b) that Grantor has a good and lawful right and power to sell and convey the Property or any interest therein, (c) no person other than _____ holds any lien or security interest in the Property or any portion thereof, and (c) that Grantor will forever warrant and defend all and singular the rights and interests conveyed to Grantee hereby unto Grantee, its successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof.
14. Notices: All notices, requests, reports, and demands (collectively, “*notices*”) given pursuant to this Environmental Protection Easement shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the party and address designated below. Notices given by attorneys on behalf of their client(s) in the manner provided in this section are effective and recognized notice pursuant to this Environmental Protection Easement. All notices to Grantor and Grantee shall be sent to the respective addresses set forth below:

If to Grantor: _____

If to Grantee: _____

Any party may change its address for notices hereunder by performing the following two acts: (i) delivery of notice of such change to all other parties in accordance with the provisions of this Section 14 and (ii) recording a change of notice address in the real property records of _____ County, Texas, referencing this Environmental Protection Easement. All notices given pursuant to this Environmental Protection Easement shall be deemed given upon the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to this Section 14 as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the party to whom it is addressed in accordance with this Section 14, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

15. General provisions:

(a) Controlling Law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the laws of the State of Texas.

(b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect

the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

(e) Grantor Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

(f) Successors: The covenants, terms and conditions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall run in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the entities named at the beginning of this document, identified as "Grantee" and their respective successors and assigns. The rights of Grantee under this instrument are freely assignable, subject to the notice provisions hereof.

(g) Termination of Obligations: Grantor's liability for obligations under this instrument shall terminate upon transfer of Grantor's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer. Grantee's liability for obligations under this instrument shall terminate upon transfer of Grantee's interest in the rights granted hereunder, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Amendment. This instrument may be amended or terminated only by written instrument executed by each of Grantor and Grantee and recorded in the real property records of _____ County, Texas.

(i) Captions: The captions in this instrument are solely for convenience of reference and shall have no effect upon construction or interpretation.

(j) Counterparts: This instrument may be executed in multiple counterparts, each of which shall be deemed and original, but all of which shall constitute but one and the same instrument. In the event of any disparity between counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD the easement herein granted, with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors and assigns forever, and Grantor do hereby bind themselves, their heirs, legal representatives, and assigns, to warrant and forever defend, all and singular, the same unto Grantee, their successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof.

EXECUTED on the dates of the acknowledgments set forth below, to be effective as of _____, 2007.

STATE OF TEXAS §

§

COUNTY OF _____ §

[insert appropriate acknowledgment]

Notary Public, State of Texas

My Commission Expires: _____

This Environmental Protection Easement is accepted this ____ day of _____, 2007.

[_____]

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

[insert appropriate acknowledgment]

Notary Public, State of Texas

My Commission Expires:_____

MORTGAGEE'S CONSENT AND AGREEMENT

The undersigned, being the holder of a lien against that portion of the Property described as "Tract ____" in Exhibit A to this Environmental Protection Easement evidenced by that certain _____ filed for record under Document No. _____ in the real property records of _____ County, Texas, hereby (i) consents to the execution of this Environmental Protection Easement, (ii) subordinates all of the undersigned's right, title, and interest in and to the Property to the rights and interests conveyed to Grantee in this Environmental Protection Easement and agrees to be bound by all of the terms and conditions hereof, and (iii) agrees that in the event of a foreclosure of said Tract _____, this Environmental Protection Easement shall remain in full force and effect and shall not be extinguished by such foreclosure.

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

[Insert appropriate form of acknowledgment].

Notary Public, State of _____
My Commission Expires: _____

MINERAL OWNER'S CONSENT AND AGREEMENT

The undersigned, being the owner of an interest in the mineral estate in the Property hereby (i) consents to the execution of this Environmental Protection Easement, (ii) subordinates all of the undersigned's right, title, and interest in and to the Property (including, without limitation, all oil, gas, and other minerals associated therewith) to the rights and interests conveyed to Grantee in this Environmental Protection Easement and agrees to be bound by all of the terms and conditions hereof, including, without limitation, the prohibited uses set forth in Section 6.

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

[Insert appropriate form of acknowledgment].

Notary Public, State of _____
My Commission Expires: _____

EXHIBIT “A”